

The Administrative Law Judge denied claimant's request for benefits because the Judge found he failed to prove timely written claim. Claimant requests the Appeals Board to review that finding. The sole issue on this review is whether claimant served timely written claim upon the respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The Award of the Administrative Law Judge should be affirmed.

Claimant alleges he injured his back on April 8, 1993 when a stool broke and he fell to the floor. Claimant completed the remainder of the work day and also worked the next day. Over the weekend, while off work, claimant began having severe back pain. On Monday, April 12, 1993, claimant was unable to work and his wife called his supervisor to report claimant's absence. Nothing was said in this conversation about claimant hurting his back at work. Claimant returned to work on Tuesday.

Before the April 1993 accident, claimant had experienced other episodes of back pain and had been hospitalized due to those symptoms for a week or so on several occasions since 1986.

Claimant saw his family physician, Dr. Frank Kutilek, on April 19, 1993 for a pre-scheduled blood pressure check and again on April 26, 1993. Because claimant was complaining of pain in his back and feet, the doctor ordered x-rays and an MRI. Dr. Kutilek also referred claimant to a neurosurgeon whom claimant saw in May 1993. For seven months between May 12 and December 21, 1993 claimant received no medical treatment. On December 21, 1993 claimant saw Dr. John Toohey, a board-certified orthopedic surgeon, who eventually operated on claimant's back in February 1994.

Based upon the evidence presented, the Appeals Board finds that claimant first provided respondent with notice of accidental injury on January 13, 1994 when he reported his back condition to respondent's First Aid Department and prepared an Employee Injury Report. Because of claimant's history of low back problems the Appeals Board finds that respondent neither had notice nor knowledge that claimant was claiming a work-related injury arising from the April 8, 1993 incident any time before claimant reported his injury to First Aid.

The Administrative Law Judge found that claimant did not file written claim until January 13, 1994 and that it was untimely. The Appeals Board agrees.

K.S.A. 44-520a provides in part:

"No proceedings for compensation shall be maintainable under the workmen's compensation act unless a written claim for compensation shall be served upon the employer by delivering such written claim to him or his duly authorized agent, or by delivering such written claim to him by registered or certified mail within two hundred (200) days after the date of the accident, or in cases where compensation payments have been suspended within two hundred (200) days after the date of the last payment of compensation; or

within one (1) year after the death of the injured employee if death results from the injury within five (5) years after the date of such accident."

In the instant case, the claimant did not present any document to the respondent before January 13, 1994 that could be construed as a written claim for benefits and that date is beyond 200 days from the date of accident on April 8, 1993.

Claimant contends he has one year from the date of accident to serve written claim under the provisions of K.S.A. 44-557(c) (Ensley) which provides:

"No limitation of time in the workmen's compensation act shall begin to run unless a report of the accident as provided in this section has been filed at the office of the director if the injured employee has given notice of accident as provided by K.S.A. 44-520 and amendments thereto, except that any proceeding for compensation for any such injury or death, where report of the accident has not been filed, must be commenced before the director within one (1) year from the date of the accident, suspension of payment of disability compensation, the date of the last medical treatment authorized by the employer, or the death of such employee referred to in K.S.A. 44-520a and amendments thereto."

Although respondent did not file its Report of Accident with the Director, that failure does not extend claimant's period to serve written claim upon the respondent. Because the respondent neither had actual knowledge that claimant injured himself in the April 8, 1993 incident nor did the claimant report the accidental injury, the respondent was not required to file an accident report with the Director's office.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Shannon S. Krysl dated August 23, 1995 should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of April 1996.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Dale V. Slape, Wichita, KS
Edward D. Heath, Jr., Wichita, KS

Christopher J. McCurdy, Wichita, KS
Shannon S. Krysl, Administrative Law Judge
Philip S. Harness, Director